

<p style="text-align: right;">Page 129</p> <p>1 Q. Right. And that's what I was going to 2 ask you. Exhibit 15 says that the meeting will 3 take place in New York but that's not your memory? 4 A. No, because I remember meeting him in 5 Philadelphia where he had been held -- he had been 6 delayed and I met him at his hotel. 7 Q. Okay. Now, when Mr. Stewart asked you 8 questions about this -- this meeting in 9 Philadelphia, I believe you indicated that you had 10 prepared a memo? 11 A. Absolutely. I wrote a report of my 12 meeting with Mr. Murphy. 13 MR. BOSTWICK: Let me show you another 14 exhibit. And I'm going to give you a -- I'll just 15 give you the -- this French version. And we'll 16 provide the other counsel with a copy -- it's 17 translated as well. 18 (The reporter marked Exhibit 16.) 19 MR. BOSTWICK: So this will be 20 Exhibit -- 21 THE REPORTER: 16? 22 MR. BOSTWICK: 16. Thank you. Would</p>	<p style="text-align: right;">Page 131</p> <p>1 introduce this at some point. 2 MR. BOSTWICK: Well, I'll introduce it 3 right now. 4 BY MR. BOSTWICK: 5 Q. Is this -- Is this a document that you 6 prepared? 7 A. Yes. 8 Q. Did you prepare that document in the 9 ordinary course of your business? 10 A. Yes. 11 Q. As an employee of Ethypharm? 12 A. Yes. 13 Q. And it was -- Was it kept as a 14 business record at Ethypharm? 15 A. Yes. 16 Q. And did you prepare it near or around 17 the time of the meeting? 18 A. Just after my return. 19 Q. Okay. Let me have you review the 20 first portion of this document that says, "Belmac 21 Spain Problem." It goes over to the second page. 22 And after you've had a chance to review that, I'll</p>
<p style="text-align: right;">Page 130</p> <p>1 this -- Would a review of this memo help you 2 recall some of the details of that meeting with 3 Mr. Murphy? 4 THE WITNESS: I -- I remember this 5 meeting very well. 6 BY MR. BOSTWICK: 7 Q. Okay. This says, Report of Meeting, 8 Philadelphia, February 5th, 1997; correct? 9 A. Yes, that's it. 10 Q. And Bentley Belmac is Mr. Jim Murphy; 11 correct? 12 A. Yes. 13 Q. And Ethypharm CD, that's you? 14 A. That's me. 15 MR. STEWART: I have an objection. 16 This witness has said that he didn't need the 17 assistance of this memorandum because he 18 remembered the meeting quite well. 19 MR. BOSTWICK: That doesn't mean I 20 can't ask him about the document. 21 MR. STEWART: I'm going on the record 22 as objecting in the event that you're seeking to</p>	<p style="text-align: right;">Page 132</p> <p>1 have some questions for you. Okay? 2 A. I'm ready. 3 Q. Okay. The -- There are four stars, 4 basically, under the first little heading. 5 Do you see that? 6 A. Yes. 7 Q. What -- What are those points designed 8 to -- to set forth? 9 A. It's a -- It's a -- It's a -- 10 historical reminder of the essential points of a 11 future agreement between Ethypharm and Belmac and 12 the assumptions under which it would be possible 13 to reach an agreement. 14 Q. Okay. So the first four points -- are 15 those points that you expressed directly to 16 Mr. Murphy at the meeting? 17 A. Yes, it was the premise of our 18 discussion on future points. 19 Q. Okay. And the first one, "MHB," is 20 the only justification for an Ethypharm manuing -- 21 manufacturing presence in Spain. Do you see that? 22 THE WITNESS (IN ENGLISH): Yes.</p>

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<p style="text-align: right;">Page 133</p> <p>1 THE INTERPRETER: Yes.</p> <p>2 BY MR. BOSTWICK:</p> <p>3 Q. What does "MHB" stand for?</p> <p>4 A. Omeprazole. Internally we used either</p> <p>5 "Omeprazole" or "MHB." It was faster.</p> <p>6 Q. Okay. So you're telling Mr. Murphy</p> <p>7 that the only justification for an Ethypharm</p> <p>8 manufacturing presence in Spain is Omeprazole; is</p> <p>9 that correct?</p> <p>10 MR. STEWART: Objection.</p> <p>11 THE WITNESS: Quite. Without</p> <p>12 Omeprazole, it is not justified that we continue</p> <p>13 manufacturing in Spain.</p> <p>14 MR. BOSTWICK: And if you'll state the</p> <p>15 basis for your objection --</p> <p>16 MR. STEWART: Form.</p> <p>17 MR. BOSTWICK: -- so I can figure out</p> <p>18 whether I want to change it.</p> <p>19 BY MR. BOSTWICK:</p> <p>20 Q. The second point, as I -- as I</p> <p>21 understand this from the translations, it relates</p> <p>22 to a discussion about how many batches of</p>	<p style="text-align: right;">Page 135</p> <p>1 A. Quality and compliance with</p> <p>2 international standards.</p> <p>3 Q. So is it fair to say that you were</p> <p>4 talking to Mr. Murphy about the compliance</p> <p>5 procedures, the quality of training for personnel,</p> <p>6 organization, and general manufacturing praf --</p> <p>7 practices --</p> <p>8 THE INTERPRETER: I'm sorry.</p> <p>9 MR. BOSTWICK: Organization and</p> <p>10 general manufacturing practices at the -- at the</p> <p>11 Spanish subsidiary.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. BOSTWICK:</p> <p>14 Q. And let's look at Point No. 4. As I</p> <p>15 understand this, generally, from the translation,</p> <p>16 that -- Well, what -- what are you saying in -- in</p> <p>17 Point No. 4 generally to Mr. Murphy at Bentley?</p> <p>18 MR. STEWART: Objection. Document</p> <p>19 speaks for itself.</p> <p>20 BY MR. BOSTWICK:</p> <p>21 Q. From your -- You can answer. From</p> <p>22 your memory as refreshed by this document, tell me</p>
<p style="text-align: right;">Page 134</p> <p>1 Omeprazole it takes to manufacture in Spain to be</p> <p>2 profitable. Is that -- Is that generally correct?</p> <p>3 A. That is correct under the conditions</p> <p>4 that had been requested by Belmac Spain.</p> <p>5 Q. And how many batches did it take to be</p> <p>6 profitable, reasonably profitable, in Spain? How</p> <p>7 many batches of Omeprazole?</p> <p>8 A. Our calculations were a little bit</p> <p>9 different; that is to say, we had demands for 40</p> <p>10 batches minimum and we wanted to -- to satisfy all</p> <p>11 the requests from our clients. And we wanted to</p> <p>12 do that under conditions that were mutually</p> <p>13 profitable for Belmac and ourselves.</p> <p>14 Q. So is it fair to say that you were</p> <p>15 discussing with Mr. Murphy of Bentley the</p> <p>16 specifics of batches and profitability of</p> <p>17 Omeprazole in Spain?</p> <p>18 A. That is correct.</p> <p>19 Q. The third point. As I understand from</p> <p>20 my translation, that relates generally to the</p> <p>21 problems that you're having with the quality of</p> <p>22 Laboratorios Belmac's manufacturing techniques.</p>	<p style="text-align: right;">Page 136</p> <p>1 what you recall.</p> <p>2 A. I know very well what it's about.</p> <p>3 Belmac requested a -- 40 million pesetas per year</p> <p>4 for Ethypharm manufacturing which was giving them</p> <p>5 a very interesting profit. By paying this price,</p> <p>6 we could not make money, by manufacturing less</p> <p>7 than 20 batches of Omeprazole and 25 of other</p> <p>8 products.</p> <p>9 And there were, then, two things.</p> <p>10 One, we could not obtain a reduction of this</p> <p>11 price. The discussion of the price was blocked</p> <p>12 with Clemente Gonzalez. Two, it was a fixed price</p> <p>13 and we were not sure that Belmac could manufacture</p> <p>14 these amounts that were --</p> <p>15 THE WITNESS (IN ENGLISH): Even these</p> <p>16 amounts.</p> <p>17 THE INTERPRETER: Even these amounts</p> <p>18 that were required for us to be profitable.</p> <p>19 THE WITNESS (IN ENGLISH): To break</p> <p>20 even.</p> <p>21 THE INTERPRETER: To break even.</p> <p>22 ...</p>

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<p style="text-align: right;">Page 137</p> <p>1 BY MR. BOSTWICK:</p> <p>2 Q. From your testimony and what is in</p> <p>3 this document, is it fair to say that at the</p> <p>4 February 5th, 1997 meeting with Mr. Murphy of</p> <p>5 Bentley -- that you were discussing details</p> <p>6 relating to profits, pricing, margins?</p> <p>7 A. That's correct.</p> <p>8 Q. As you read the next portion of that</p> <p>9 document, do you recall what Mr. Murphy's</p> <p>10 suggested proposal was with respect to the</p> <p>11 operations of the Spanish subsidiary?</p> <p>12 A. Mr. Murphy proposed to close the</p> <p>13 Spanish subsidiary and to take over all the</p> <p>14 activities of Ethypharm in Spain.</p> <p>15 Q. Close which Spanish subsidiary?</p> <p>16 A. Ethypharm Spain.</p> <p>17 Q. So -- So just to make sure I</p> <p>18 understand, Mr. Murphy proposed that Ethypharm</p> <p>19 close its Spanish subsidiary and Bentley through</p> <p>20 it subsidiary would overtake all operations?</p> <p>21 A. That is correct.</p> <p>22 MR. BOSTWICK: When -- When he says</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. So that's -- So the overdue rent due</p> <p>2 from Ethypharm's Spanish subsidiary to Bentley's</p> <p>3 subsi -- Spanish subsidiary was a point of</p> <p>4 negotiation between you and Mr. Murphy at this</p> <p>5 meeting; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. What did you propose on behalf of</p> <p>8 Ethypharm and its subsidiary?</p> <p>9 A. I proposed that insofar as we could be</p> <p>10 sure that the Belmac could manufacture 40 batches</p> <p>11 per year and that the GMP standards were complied</p> <p>12 with, we were ready to propose getting out of a</p> <p>13 global rent by making one part fixed -- oh -- the</p> <p>14 other part a fee per batch. This would allow us</p> <p>15 to make money right from the beginning, at least</p> <p>16 for the first six months, and after that, to be</p> <p>17 both interested in the progression -- in the</p> <p>18 progress -- in the number of lot -- of batches</p> <p>19 manufactured so it was then a new type of</p> <p>20 agreement of fabrication -- manufacturing</p> <p>21 contract. And it is finally the one that was</p> <p>22 applied following this.</p>
<p style="text-align: right;">Page 138</p> <p>1 "C'est exact," does that mean that's exactly</p> <p>2 right, or does it -- just --</p> <p>3 THE INTERPRETER: That's exactly.</p> <p>4 That's correct.</p> <p>5 THE WITNESS (IN ENGLISH): That's</p> <p>6 correct.</p> <p>7 THE INTERPRETER: Yeah.</p> <p>8 BY MR. BOSTWICK:</p> <p>9 Q. Okay. What's your response to that</p> <p>10 proposal?</p> <p>11 A. That it was not at all in our</p> <p>12 intentions to close our Spanish operations, that</p> <p>13 we wanted to keep the control of our operations in</p> <p>14 Spain and, in particular, manufacturing of</p> <p>15 Omeprazole.</p> <p>16 Q. Did you discuss overdue rent to be</p> <p>17 paid for the Belmac subsidiary, the Spanish</p> <p>18 subsidiary?</p> <p>19 A. Yes.</p> <p>20 Q. Who brought that issue up?</p> <p>21 A. It was an issue that was in the letter</p> <p>22 from Mr. Murphy to Mr. Debregeas.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. So am I correct in understanding that</p> <p>2 this is a real -- this is a significant change in</p> <p>3 the commercial relationship between the Spanish</p> <p>4 subsidiaries; is that correct?</p> <p>5 MR. STEWART: Objection.</p> <p>6 THE WITNESS: Yes, it is the</p> <p>7 possibility to get into a new cooperation for</p> <p>8 manufacturing in Spain.</p> <p>9 BY MR. BOSTWICK:</p> <p>10 Q. And did I understand your former</p> <p>11 testimony to be that this framework, this new</p> <p>12 framework, became the framework that the parties</p> <p>13 followed for the next number of years?</p> <p>14 A. It's correct in two areas: one, the</p> <p>15 different steps to be performed; and, two, the</p> <p>16 type of compensation for manufacturing of</p> <p>17 Ethypharm at Belmac.</p> <p>18 Q. And that negotiation took place only</p> <p>19 at this meeting on February 5th, 1997?</p> <p>20 MR. STEWART: Objection. Form.</p> <p>21 THE WITNESS: Yes, it took place</p> <p>22 during this meeting and was confirmed after the</p>

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<p style="text-align: right;">Page 141</p> <p>1 meeting in writing.</p> <p>2 MR. BOSTWICK: Okay.</p> <p>3 BY MR. BOSTWICK:</p> <p>4 Q. Looking at the -- You also discussed</p> <p>5 the quality assurance reports between -- the</p> <p>6 quality assurance reports prepared by Ethypharm;</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And I'm looking at the -- the last</p> <p>10 sentence on the second page of Exhibit 16 and I'm</p> <p>11 reading the translation and it says:</p> <p>12 Bentley/Belmac has a quality consultant,</p> <p>13 formerly SKB, for all of its</p> <p>14 manufacturing process.</p> <p>15 Do you see that?</p> <p>16 A. Yes, I see it.</p> <p>17 Q. Was -- Was that a quality consultant</p> <p>18 from the U.S.?</p> <p>19 A. It's quality consultant that was</p> <p>20 formerly at SmithKline Beecham, SKB, which was the</p> <p>21 company in which Mr. Murphy was working</p> <p>22 previously.</p>	<p style="text-align: right;">Page 143</p> <p>1 subsidiary, Laboratorios Belmac, relating to</p> <p>2 Omeprazole, did Mr. Murphy suggest expanding the</p> <p>3 relationship with Ethypharm in Spain?</p> <p>4 A. He talked about the new products</p> <p>5 acquired and I think he was seeking partners for</p> <p>6 these -- for those products. Of course, there we</p> <p>7 have a need of many points but the discussion was</p> <p>8 very open.</p> <p>9 Q. Do you recall discussing anything</p> <p>10 about the export of other products from Spain?</p> <p>11 A. It was a wish for -- by Mr. Murphy</p> <p>12 to -- that Spain would act as a base to develop</p> <p>13 exports, both in Europe and to European countries;</p> <p>14 and to South American countries, for example. He</p> <p>15 was interested in that and would have liked to</p> <p>16 take Ethypharm products but in the past we had</p> <p>17 already rejected his offer and there I rejected</p> <p>18 it -- I rejected it again.</p> <p>19 Q. Am I correct in understanding from</p> <p>20 that answer that Mr. Murphy was discussing</p> <p>21 Bentley's strategy for using the operations of its</p> <p>22 subsidiary?</p>
<p style="text-align: right;">Page 142</p> <p>1 And my understanding was that it was</p> <p>2 based in the United States.</p> <p>3 Q. So as I understand that, Mr. Murphy is</p> <p>4 indicating that he will send a quality consultant</p> <p>5 from the U.S. to look into the Spanish subsidiary</p> <p>6 situation; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. What other -- There -- There's</p> <p>9 another section entitled "Other."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What else did you discuss at that</p> <p>13 meeting with Mr. Murphy?</p> <p>14 A. We discussed Bentley's strategy in</p> <p>15 general in the United States, in France where they</p> <p>16 had a small chemical company, in Spain in terms of</p> <p>17 acquisition of products or acquisition of</p> <p>18 companies, in terms of product development, in</p> <p>19 terms of seeking partnerships, and communication</p> <p>20 of the operations of Bentley and Belmac in Spain.</p> <p>21 Q. In exist -- In addition to discussing</p> <p>22 the specifics of the operations in the Spanish</p>	<p style="text-align: right;">Page 144</p> <p>1 A. That is how I understood it, yes.</p> <p>2 Q. And as I understand it, was this --</p> <p>3 The result of this -- I believe you -- Strike</p> <p>4 that.</p> <p>5 I believe you referred to the result</p> <p>6 of this February 5th, 1997 meeting as ending in an</p> <p>7 oral agreement in principle.</p> <p>8 A. Quite.</p> <p>9 MR. BOSTWICK: Let me show you another</p> <p>10 exhibit which, I guess, is Exhibit 17.</p> <p>11 (The reporter marked Exhibit 17.)</p> <p>12 MR. BOSTWICK: And it's a</p> <p>13 February 13th, 1997 letter. It's possible that's</p> <p>14 already in the record but I -- I'm not sure.</p> <p>15 BY MR. BOSTWICK:</p> <p>16 Q. My question to you, Mr. Dubois, is --</p> <p>17 I believe you said that there were a number of</p> <p>18 letters sent back and forth to Mr. Murphy at</p> <p>19 Bentley following your meeting in February; is</p> <p>20 that correct?</p> <p>21 A. I said I confirmed our agreement in</p> <p>22 principle and our proposal after my return from</p>

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<p style="text-align: right;">Page 145</p> <p>1 this meeting and this is the letter that I wrote 2 to confirm our agreement in principle. 3 Q. Okay. Now, you also indicated in your 4 testimony in response to Mr. Stewart's questions 5 that there was an effort to memorialize this 6 agreement in principle. 7 THE INTERPRETER: "Memorialize." I'm 8 not sure -- "memorialize" -- what you mean. 9 MR. STEWART: Put in writing. 10 MR. BOSTWICK: Put in writing. Thank 11 you. 12 THE INTERPRETER: Okay. 13 THE WITNESS: Yeah, this was an 14 agreement in principle that covered a time 15 period -- a six-month time period after which a 16 new agreement, manufacturing contract, had to be 17 done. 18 BY MR. STEWART: 19 Q. And I believe you also indicated that 20 there was an April 1997 meeting and also an 21 April 1998 meeting at -- at the offices of 22 Ethypharm. Am I correct?</p>	<p style="text-align: right;">Page 147</p> <p>1 BY MR. BOSTWICK: 2 Q. And I'd just ask you to look at that 3 letter. 4 A. Okay. 5 Q. Okay? 6 A. I'm ready. 7 Q. And the first question I have is: Do 8 you recognize that as a letter that you received 9 from Mr. Murphy around April of 1997? 10 A. Yes. I recognize my handwriting on 11 the upper right portion. 12 Q. Can you read that handwriting for us 13 or no? 14 A. Received on April 12th, 1997. In my 15 own hands, something like that. 16 THE WITNESS (IN ENGLISH): It's maybe 17 18 April. 18 THE INTERPRETER: It could be 19 April 18th and I think this was given to me during 20 the meeting with Belmac. 21 THE WITNESS (IN ENGLISH): By hand. 22 THE WITNESS: In my own hands.</p>
<p style="text-align: right;">Page 146</p> <p>1 THE WITNESS (IN ENGLISH): Yes. 2 THE WITNESS: That is correct. 3 BY MR. BOSTWICK: 4 Q. And if I'm correct in my memory of 5 your testimony, I believe you had indicated that 6 Mr. Murphy was supposed to attend the April 1997 7 meeting but that he canceled at the last minute. 8 Am I correct? 9 A. Yeah, that's correct. This -- This 10 meeting had been done according to Mr. Murphy's 11 schedule who was supposed to be in Europe the next 12 week. 13 THE WITNESS (IN ENGLISH): Weeks. I 14 mean, after my meeting. 15 THE WITNESS: In the weeks following 16 his meeting and the meeting was put together in 17 St. Cloud with him and the Belmac team, but at the 18 last minute, a few days before the meeting, 19 Mr. Murphy canceled his attendance. 20 MR. BOSTWICK: Let me show you what 21 would be marked Exhibit 18. 22 (The reporter marked Exhibit 18.)</p>	<p style="text-align: right;">Page 148</p> <p>1 MR. BOSTWICK: Ah. I see. 2 BY MR. BOSTWICK: 3 Q. So it was a surprise to you that 4 Mr. Murphy did not show up at this meeting? 5 A. I think he had announced that he would 6 not be coming several days before. 7 Q. I see. So you got the -- the formal 8 indication at the meeting through this letter? 9 MR. STEWART: Objection. How was that 10 translated? The formal indication? Does that 11 indicate the first indication? 12 THE WITNESS (IN ENGLISH): No. 13 MR. BOSTWICK: I'll -- I'll strike the 14 question. 15 BY MR. BOSTWICK: 16 Q. Am I correct that you got a written 17 indication that Mr. Murphy would not attend at -- 18 by hand at the meeting? 19 A. Yes, you can say that but the subject 20 of the letter, topic of the letter, was covering 21 other items. 22 Q. And this letter is -- What's the</p>

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<p style="text-align: right;">Page 149</p> <p>1 letterhead on this? What company is this from?</p> <p>2 A. Bentley Pharmaceuticals.</p> <p>3 Q. Did you understand from this letter</p> <p>4 that -- as well as your prior interactions that</p> <p>5 Mr. Murphy was writing this letter in his position</p> <p>6 as chairman and CEO of Bentley?</p> <p>7 MR. STEWART: Objection. Form.</p> <p>8 THE WITNESS: Yes, of course.</p> <p>9 MR. BOSTWICK: Okay.</p> <p>10 BY MR. BOSTWICK:</p> <p>11 Q. And I want you to look at the</p> <p>12 third-to-last paragraph which says, Unfortunately,</p> <p>13 I'm not able to assist at the meeting that will be</p> <p>14 held at your Paris office but we certainly wish to</p> <p>15 find together the best solution for both</p> <p>16 companies. And I believe that you will find the</p> <p>17 most flexible position in Clemente Gonzalez and</p> <p>18 his collaborators. Collaborators.</p> <p>19 Did you understand from that portion</p> <p>20 of the letter that Clemente Gonzalez and his</p> <p>21 collaborators from Laboratorios Belmac had</p> <p>22 Mr. Murphy's authority from Bentley to continue --</p>	<p style="text-align: right;">Page 151</p> <p>1 appeared already to -- to occur -- to be</p> <p>2 occurring. Mr. Murphy, referring to a -- a</p> <p>3 scale-up in the industrial power that was not</p> <p>4 accomplished yet, the need to recruit additional</p> <p>5 collaborators, and, of course, to train them --</p> <p>6 and they're our responsibility -- and this made me</p> <p>7 feel that the schedule that we had established to</p> <p>8 manufacture 20 batches of Omeprazole in six months</p> <p>9 would not be held, probably not held. And I think</p> <p>10 this actually was part of our discussions with</p> <p>11 Mr. Gonzalez and his collaborators.</p> <p>12 Another concern is that the visit by the</p> <p>13 quality consultant that he had announced was</p> <p>14 canceled and that a meeting between our quality</p> <p>15 insurance people and those of Belmac was</p> <p>16 suggested --</p> <p>17 THE WITNESS (IN ENGLISH): To</p> <p>18 establish a program with --</p> <p>19 THE INTERPRETER: -- to establish a</p> <p>20 program.</p> <p>21 MR. BOSTWICK: Okay. Mr. Dubois, due</p> <p>22 to time constraints, I'm not going to ask you any</p>
<p style="text-align: right;">Page 150</p> <p>1 to -- to discuss -- to continue to discuss the</p> <p>2 matters that you had been discussing in</p> <p>3 Philadelphia?</p> <p>4 A. Not exactly. My understanding was</p> <p>5 that Mr. Murphy had given Mr. Gonzalez and his</p> <p>6 collaborators instructions to obtain the best</p> <p>7 possible solutions according to what had been</p> <p>8 discussed to him because Mr. Gonzalez is not</p> <p>9 particularly a flexible man according to my</p> <p>10 experience of two or three years of negotiations</p> <p>11 with him; and if he was to become flexible, it's</p> <p>12 because he had instructions to become flexible.</p> <p>13 Q. Okay. Let me -- Is there anything</p> <p>14 else, before we move on from this document,</p> <p>15 Exhibit 18, that you find particularly significant</p> <p>16 in terms of the -- the negotiations that are</p> <p>17 ongoing at this time?</p> <p>18 MR. STEWART: Objection. Calls for a</p> <p>19 narrative and vague. Objection as to form.</p> <p>20 THE WITNESS: I was concerned by two</p> <p>21 points:</p> <p>22 The -- The -- The -- The delays that</p>	<p style="text-align: right;">Page 152</p> <p>1 further questions about that April '97 meeting</p> <p>2 now; and -- and, instead, I'm going to go to the</p> <p>3 April 1998 meeting.</p> <p>4 Okay. And let me give you a document</p> <p>5 which I believe will be marked as Exhibit 19.</p> <p>6 Thank you.</p> <p>7 (The reporter marked Exhibit 19.)</p> <p>8 BY MR. BOSTWICK:</p> <p>9 Q. And I'd ask you to take a look at that</p> <p>10 document and see if it refreshes your memory about</p> <p>11 who may have been at the meeting or who some of</p> <p>12 the participants at the meeting in April of</p> <p>13 1998 were.</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Who -- Who would have been --</p> <p>16 Who was at the meeting in April '98 at the offices</p> <p>17 of St. Cloud other than yourself?</p> <p>18 A. Other than myself, all these people,</p> <p>19 all these persons, plus -- plus, probably, Gerard</p> <p>20 Leduc and Patrice Debregeas, partially, as usual.</p> <p>21 Q. Okay. So that when you say, "all</p> <p>22 these persons," you're talking about page 2 of the</p>

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<p style="text-align: right;">Page 153</p> <p>1 document marked as Exhibit 19? Okay.</p> <p>2 A. And I think also Mr. Barnabe attended</p> <p>3 the meeting.</p> <p>4 Q. And did you also --</p> <p>5 A. Perhaps Mrs. Gavaille but I'm not</p> <p>6 sure.</p> <p>7 Q. Did you also mention as a possible</p> <p>8 participant Mrs. Joannesse?</p> <p>9 A. I think she came but just to -- to</p> <p>10 pass on a draft of a confidentiality agreement.</p> <p>11 Q. Okay. You mentioned -- You mentioned</p> <p>12 a confidentiality agreement that was to be signed</p> <p>13 between Bentley and Belmac, I believe, in response</p> <p>14 to some of Mr. Stewart's questions.</p> <p>15 A. Absolutely, between Bentley, Belmac,</p> <p>16 and Ethypharm.</p> <p>17 MR. BOSTWICK: I'm going to mark an</p> <p>18 exhibit for you as what I believe will be</p> <p>19 Exhibit 20.</p> <p>20 (The reporter marked Exhibit 20.)</p> <p>21 BY MR. BOSTWICK:</p> <p>22 Q. And I'd ask if you can take a look at</p>	<p style="text-align: right;">Page 155</p> <p>1 THE WITNESS (In English): By</p> <p>2 Ethypharm.</p> <p>3 THE INTERPRETER: -- by Ethypharm is</p> <p>4 present in the facilities and are the exclusive</p> <p>5 property of Ethypharm. And that Belmac was</p> <p>6 committing to not using that outside of an</p> <p>7 agreement with Ethypharm.</p> <p>8 BY MR. BOSTWICK:</p> <p>9 Q. Were those -- Did Bentley and Belmac</p> <p>10 orally agree that that was true at the April</p> <p>11 meeting with you?</p> <p>12 MR. STEWART: Objection. Form.</p> <p>13 MR. BOSTWICK: The matters in this</p> <p>14 letter, set -- set forth in the last two pages of</p> <p>15 Exhibit 20.</p> <p>16 MR. STEWART: I'm going to object not</p> <p>17 only as to form but also this is now going beyond</p> <p>18 the scope -- beyond the reasonable scope of our --</p> <p>19 our discovery in two issues of agency. And if you</p> <p>20 want to get into the details of that, I'm happy to</p> <p>21 have Mr. -- Mr. Dubois stay for as long as I need</p> <p>22 to get into these details myself.</p>
<p style="text-align: right;">Page 154</p> <p>1 that document and tell me if you recognize it.</p> <p>2 A. Yeah. This document seems familiar to</p> <p>3 me.</p> <p>4 MR. STEWART: I'm -- I'm going to</p> <p>5 object on the same basis that Mr. Bostwick</p> <p>6 objected, that it appears that the Bates numbers</p> <p>7 on the bottom are entirely out of order so it's</p> <p>8 very difficult to tell, at least from this, as to</p> <p>9 whether or not these documents actually belong</p> <p>10 together.</p> <p>11 MR. BOSTWICK: Okay.</p> <p>12 BY MR. BOSTWICK:</p> <p>13 Q. And looking at the last two pages of</p> <p>14 that document, what -- what is that document?</p> <p>15 A. It's a document to formalize the</p> <p>16 recognition by Bentley and Belmac of what was</p> <p>17 transmitted both in terms of document -- and in</p> <p>18 terms of documents and in terms of know-now by</p> <p>19 Ethypharm Spain; and, on the other hand, the</p> <p>20 recognition by Bentley Belmac that the equipment</p> <p>21 and the material -- equipment and information</p> <p>22 transmitted --</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. BOSTWICK: Craig, you asked</p> <p>2 questions about this specific document for about a</p> <p>3 half an hour without showing it to him. I have</p> <p>4 asked questions about this document showing it to</p> <p>5 him for about four minutes, so I'm going to take a</p> <p>6 couple more without it moving over into Phase II</p> <p>7 discovery at all.</p> <p>8 MR. STEWART: Just so you know.</p> <p>9 THE WITNESS (IN ENGLISH): Okay.</p> <p>10 THE INTERPRETER: Okay. As I said</p> <p>11 previously, I believe this document was responding</p> <p>12 to a concern by Ethypharm to formalize the</p> <p>13 recognition of its technology and know-how.</p> <p>14 THE WITNESS: As far as I can judge,</p> <p>15 during the raining -- during the meeting, both</p> <p>16 Bentley and Belmac acknowledged the legality of</p> <p>17 such a document, the legitimacy of such a</p> <p>18 document.</p> <p>19 THE WITNESS (IN ENGLISH): Relevance,</p> <p>20 maybe.</p> <p>21 THE INTERPRETER: Relevance. And no</p> <p>22 disagreement was expressed by the attendants about</p>

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<p style="text-align: right;">Page 157</p> <p>1 this document.</p> <p>2 MR. BOSTWICK: Okay.</p> <p>3 BY MR. BOSTWICK:</p> <p>4 Q. Is it fair to say that at the</p> <p>5 April 1998 meeting Bentley and Belmac</p> <p>6 representatives acknowledged that the technology</p> <p>7 and know-how for Omeprazole's pellets and other</p> <p>8 products using microgranulation was the property,</p> <p>9 the sole property, of Ethypharm?</p> <p>10 A. Yes, that's what -- That's my</p> <p>11 understanding.</p> <p>12 Q. Mr. Stewart asked you -- I just have a</p> <p>13 few more questions.</p> <p>14 Mr. Stewart asked you a number of</p> <p>15 questions about drafts of documents that were sent</p> <p>16 back and forth between the subsidiaries, the</p> <p>17 Spanish subsidiaries.</p> <p>18 Do you recall those questions?</p> <p>19 A. I think you are referring to the draft</p> <p>20 contract of September '98.</p> <p>21 Q. Right, and other documents like that,</p> <p>22 like '95 and other years. Why were agreements</p>	<p style="text-align: right;">Page 159</p> <p>1 BY MR. BOSTWICK:</p> <p>2 Q. Is there a distinction in your mind</p> <p>3 between the legal documentation of this commercial</p> <p>4 relationship in Spain and who directed and</p> <p>5 controlled the negotiation of the relationship?</p> <p>6 MR. STEWART: Objection. Form.</p> <p>7 THE WITNESS: Absolutely, very</p> <p>8 naturally. That's often the case. The</p> <p>9 negotiations, the decision-making process, happens</p> <p>10 between two entities; and after that, of course,</p> <p>11 there is the legal formalizations that can be</p> <p>12 subjected to other constraints. That may not</p> <p>13 reflect precisely who took the -- who made the</p> <p>14 decision.</p> <p>15 MR. BOSTWICK: I don't have any</p> <p>16 further questions.</p> <p>17 MR. STEWART: That was about an hour</p> <p>18 and twenty minutes or so.</p> <p>19 FURTHER EXAMINATION BY COUNSEL FOR THE DEFENDANT</p> <p>20 BY MR. STEWART:</p> <p>21 Q. Mr. Dubois, please turn to Exhibit 20.</p> <p>22 Do you have it? Okay. Now, you told Mr. Bostwick</p>
<p style="text-align: right;">Page 158</p> <p>1 relating to the manufacture in Spain drafted to be</p> <p>2 signed by the subsidiaries in Spain rather than</p> <p>3 the parents?</p> <p>4 A. As I told Mr. Stewart, it was about</p> <p>5 tasks being performed in Spain between two Spanish</p> <p>6 companies, then subjected to Spanish law and</p> <p>7 having -- having all of their operations in Spain</p> <p>8 for the purpose of this agreement; so, naturally,</p> <p>9 for us, legally, as is customary, the agreement</p> <p>10 had to be done between the Spanish companies for</p> <p>11 legal reasons.</p> <p>12 Q. Is there a distinction between the</p> <p>13 legal documentation of a commercial relationship</p> <p>14 and who controls the negotiation?</p> <p>15 MR. STEWART: Objection. Calls for a</p> <p>16 legal conclusion.</p> <p>17 THE INTERPRETER: What was the other</p> <p>18 point?</p> <p>19 MR. BOSTWICK: I'll ask the question</p> <p>20 again.</p> <p>21 THE INTERPRETER: Oh, okay.</p> <p>22...</p>	<p style="text-align: right;">Page 160</p> <p>1 that at the meeting in April 1998 -- participants</p> <p>2 from Bentley and from Belmac agreed to these</p> <p>3 terms. Is that -- Is that your testimony, sir?</p> <p>4 A. They agreed in principle. They didn't</p> <p>5 have any objections to these documents but the</p> <p>6 precise wording of agreement was transmitted to</p> <p>7 them after the meeting.</p> <p>8 Q. Did they have before them a written</p> <p>9 document when you say they agreed in principle?</p> <p>10 A. As I said, I think Mrs. Joannesse came</p> <p>11 to propose a draft document; and after that, she</p> <p>12 submitted it to Mr. Leduc after having submitted</p> <p>13 it to the participants.</p> <p>14 Q. And?</p> <p>15 A. And Mr. -- And Mr. -- And</p> <p>16 Mr. De Basilio sent this text for review by</p> <p>17 Mr. Leduc on February 6th.</p> <p>18 Q. And where is the -- Where is a copy of</p> <p>19 the document that Rosaline Joannesse dis -- had at</p> <p>20 the meeting on April -- in April of 1998?</p> <p>21 A. I don't know. You should ask</p> <p>22 Mrs. Joannesse. I -- I seem to recall that she</p>

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<p style="text-align: right;">Page 161</p> <p>1 came with a draft document that she submitted to 2 the participants. 3 Q. Did she have one copy or did she have 4 many? 5 A. I don't recall. 6 Q. What day did she give the copies? 7 What day did she have this copy? 8 A. It was during the meeting. 9 Q. The meeting is referenced as -- What 10 is the date of the meeting? 11 A. The 2nd or 3rd, I believe. 12 Q. That's what I'm -- That's my question. 13 Was it the 2nd or 3rd of April? 14 A. I don't know. I would have to see a 15 calendar. 16 MR. STEWART: Okay. 17 THE WITNESS (In English): I don't 18 remember precisely. 19 BY MR. STEWART: 20 Q. Was the meeting held on one day? 21 A. Yes. 22 Q. Did you compare -- the -- Did you</p>	<p style="text-align: right;">Page 163</p> <p>1 THE WITNESS (IN ENGLISH): Maybe there 2 was two and then they were given back. 3 BY MR. STEWART: 4 Q. How many minutes did Mr. Murphy and 5 the other attendants -- attendees at the meeting 6 have to look at this document? 7 A. I don't -- I don't remember. The 8 meeting was very long, anyway. 9 Q. How many minutes did it -- did they 10 have the document in their possession? 11 A. I do not remember. 12 Q. Take a look, please, at page 8628 of 13 the document. At the meeting, did Madame 14 Joannesse ex -- provide the patent numbers that 15 are referred to in the sentence that begins, 16 Ethypharm owns in addition to patents relating to 17 formulation and processed -- 18 A. I don't believe it was the case. 19 Q. Did she specify the manufacturing and 20 control methods that are referred to in this 21 document? 22 A. Not at all. She was just taking</p>
<p style="text-align: right;">Page 162</p> <p>1 compare the document that Mr. De Basilio obtained 2 from Mr. Leduc and the document that Madame 3 Joannesse had at the meeting? 4 A. No. 5 Q. You don't know, do you, whether the 6 member -- whether representatives of Belmac and 7 Bentley actually saw the document that Madame 8 Joannesse had with her; is that right? 9 A. The purpose of coming to the meeting 10 with the -- such a document was to show it to 11 them. 12 Q. And she had one copy with her? 13 A. Again, I don't remember. 14 Q. And do you recall Madame Joannesse 15 showing the document to the representatives of 16 Belmac and Bentley? 17 THE WITNESS (IN ENGLISH): Yes. 18 THE INTERPRETER: Yes. 19 BY MR. STEWART: 20 Q. And she showed -- As far as you know, 21 she showed one copy to -- to Mr. Murphy? 22 A. I think one copy was circulating, yes.</p>	<p style="text-align: right;">Page 164</p> <p>1 everything that had been transmitted by Ethypharm 2 to Bentley/Belmac and that was in the 3 possession -- in Belmac's possession in its plant. 4 Q. So she did not specify the processes, 5 the technology, and know-how that is referred to 6 in this letter; is that right? 7 A. Again, it was not about transmitting 8 something unknown or something new. It was just 9 about taking an existing situation and making it 10 normal. 11 Q. Is there any exception that you can 12 see in this -- in this document for technology, 13 know-how, processes, control methods -- that was 14 already known to representatives of Bentley and 15 Belmac from other sources? 16 THE WITNESS (IN ENGLISH): No. To the 17 best of my knowledge, Belmac in its -- (continuing 18 in French). 19 THE INTERPRETER: To the best of my 20 knowledge, Belmac was not manufacturing pellets in 21 its Spanish subsidiary -- subsidiary before the 22 cooperation with Ethypharm.</p>

41 (Pages 161 to 164)

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<p style="text-align: right;">Page 165</p> <p>1 BY MR. STEWART:</p> <p>2 Q. To the best of your knowledge, is</p> <p>3 there publicly available -- publicly known</p> <p>4 technology for the manufacture of pellets?</p> <p>5 A. There are many technologies available</p> <p>6 for the manufacturing of pellets. Some are</p> <p>7 patented. Some are not. But technology without</p> <p>8 the know-how to -- to make a specific products --</p> <p>9 doesn't have much value. That's why we specify</p> <p>10 each time technology and know-how.</p> <p>11 Q. And if Bentley or Belmac had know-how</p> <p>12 that it obtained from sources other than -- other</p> <p>13 than Ethypharm, from this document, we couldn't</p> <p>14 determine, could we, whether Bentley had any</p> <p>15 obligation to Ethypharm with respect to technology</p> <p>16 that Ethypharm claimed it owned?</p> <p>17 A. It's possible that Bentley acquired</p> <p>18 technology for the realization of -- for</p> <p>19 products -- oh, for -- for prolonged-action</p> <p>20 products.</p> <p>21 During discussions with Mr. Murphy, he</p> <p>22 himself told me that he was seeking to acquire</p>	<p style="text-align: right;">Page 167</p> <p>1 audit reports from Marcelle Gavaille and Pierre</p> <p>2 Fontani it is referred to -- Ethypharm France</p> <p>3 documents for manufacturing procedures.</p> <p>4 BY MR. STEWART:</p> <p>5 Q. At the meeting on April 2nd and 3rd</p> <p>6 were those documents or a summary of those</p> <p>7 documents ever given to representatives of Belmac</p> <p>8 or Bentley?</p> <p>9 MR. BOSTWICK: Same objection.</p> <p>10 THE WITNESS: No.</p> <p>11 MR. STEWART: Okay.</p> <p>12 BY MR. STEWART:</p> <p>13 Q. Would you agree that a prudent manager</p> <p>14 would not sign such an agreement until the prudent</p> <p>15 manager had a -- a -- a specific description of</p> <p>16 the know-how and technology that he was being</p> <p>17 asked not to disclose or to use?</p> <p>18 A. I don't know what a product manager</p> <p>19 would do but if he had any doubt as to the</p> <p>20 document that he had to protect, he would have</p> <p>21 requested either at that time or just after the</p> <p>22 meeting, the list of the documents.</p>
<p style="text-align: right;">Page 166</p> <p>1 technologies in the area of transdermics --</p> <p>2 THE WITNESS (IN ENGLISH): Transdermal.</p> <p>3 THE INTERPRETER: Transdermal. Yeah.</p> <p>4 And that he was even acquiring other</p> <p>5 products than Ethypharm in the form of modified</p> <p>6 action but Belmac as I said, to my knowledge, was</p> <p>7 not manufacturing prolonged-action products,</p> <p>8 pellets or others, before working with Ethypharm;</p> <p>9 otherwise, they would not have needed Ethypharm to</p> <p>10 train their technicians.</p> <p>11 BY MR. STEWART:</p> <p>12 Q. Are you aware of any document that</p> <p>13 Ethypharm has which specifies the manufacturing</p> <p>14 and control methods, processes, technology, and</p> <p>15 know-how as those terms are used in -- in</p> <p>16 Exhibit 20?</p> <p>17 MR. BOSTWICK: Objection. That's</p> <p>18 Phase II.</p> <p>19 THE REPORTER: That's what?</p> <p>20 MR. BOSTWICK: Phase II discovery.</p> <p>21 THE WITNESS (IN ENGLISH): I recall --</p> <p>22 THE INTERPRETER: I recall that in the</p>	<p style="text-align: right;">Page 168</p> <p>1 Q. Would a prudent manager sign a</p> <p>2 document such as this until he had such</p> <p>3 information?</p> <p>4 MR. BOSTWICK: Objection.</p> <p>5 Speculation. And asked and answered.</p> <p>6 THE WITNESS: I don't know. Again, I</p> <p>7 think I answered this question in my previous</p> <p>8 answer.</p> <p>9 BY MR. STEWART:</p> <p>10 Q. Was -- To your knowledge, was</p> <p>11 Exhibit 20 ever signed?</p> <p>12 A. I never saw this document signed. I</p> <p>13 do not recall.</p> <p>14 Q. Let's go back to --</p> <p>15 A. I think, however, that the documents</p> <p>16 were signed after my departure because something</p> <p>17 was showed earlier.</p> <p>18 THE WITNESS (IN ENGLISH): I didn't</p> <p>19 sign it.</p> <p>20 THE INTERPRETER: March, you said?</p> <p>21 THE WITNESS (IN ENGLISH): Or</p> <p>22 something like that.</p>

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<p style="text-align: right;">Page 169</p> <p>1 THE INTERPRETER: It was signed March 2 or something like that. 3 BY MR. STEWART: 4 Q. This is a document signed by Bentley 5 and signed by -- and signed by Laboratorios 6 Belmac? 7 A. Only by Belmac, I believe. You asked 8 me if I had seen these documents signed and I 9 wanted to check if it was not one of the documents 10 that were shown before. 11 Q. But my question -- Was this the 12 document that you -- that you have been talking 13 about, Exhibit 20? 14 THE WITNESS (IN ENGLISH): Mm-hmm. 15 BY MR. STEWART: 16 Q. Do you know whether this document was 17 signed? 18 MR. BOSTWICK: Objection. Asked and 19 answered. 20 THE WITNESS: I never saw a copy of 21 this document signed. 22 MR. STEWART: Okay. Let me have</p>	<p style="text-align: right;">Page 171</p> <p>1 marked as Exhibit 16. Now, you -- In answer to 2 questions that Mr. Bostwick put to you, you said 3 that Mr. -- you and Mr. Murphy were discussing 4 marketing and production, among other things, at 5 your meeting. 6 A. That is correct. 7 Q. And in your memorandum of your 8 meeting, you list four points that you reviewed 9 with Mr. Murphy; is that correct? 10 A. No. This -- These -- These were 11 points that were a reminder of the history of our 12 collaboration and the problems that arise -- 13 arisen before our collaboration. 14 THE WITNESS (IN ENGLISH): For our 15 discussion. 16 THE INTERPRETER: For our discussion. 17 BY MR. STEWART: 18 Q. All right. Let me see if I understand 19 it. So at the meeting on February 5 of 1997 did 20 you -- did you review each -- Did you -- Did you 21 state or summarize each of these points to 22 Mr. Murphy?</p>
<p style="text-align: right;">Page 170</p> <p>1 marked -- Yeah. Oh. I need to mark a couple of 2 other documents. Mark, please, a letter from 3 Clement -- Clemente Gonzalez Azpeitia dated 4 March 20, 1997 as Exhibit? 5 THE REPORTER: 21. 6 MR. STEWART: 21. 7 (The reporter marked Exhibit 21.) 8 MR. STEWART: A letter dated April 1, 9 1997 from Mr. Dubois. 10 MR. BOSTWICK: So this one is -- Oh. 11 Oh. This will be 22. 12 (The reporter marked Exhibit 22.) 13 MR. BOSTWICK: Do you want me to give 14 him this one, too? 15 MR. STEWART: Sure. And a letter from 16 Mr. Dubois to Mr. Murphy -- which I guess we're 17 going to identify as Exhibit 23. 18 (The reporter marked Exhibit 23.) 19 BY MR. STEWART: 20 Q. Mr. Dubois, before talking a little 21 bit about Exhibits 21, 22, and 23, I want to turn 22 to your memorandum of the meeting which we've</p>	<p style="text-align: right;">Page 172</p> <p>1 A. Yes. 2 Q. So you were speaking to him and you 3 were summarizing these four points? 4 A. You can say that. 5 Q. Did Mr. Murphy disagree that it took 6 20 batches of Omeprazole a year to balance the 7 books? 8 A. 20 batches plus 25 of other products 9 and -- but there was no disagreement on this 10 point. 11 Q. Did he have -- 12 A. These points were a -- a reminder of 13 previous discussions and history to set the 14 framework for the following discussions. 15 Q. Mr. Murphy didn't have any basis to 16 agree or disagree with respect to what production 17 was necessary for Ethypharm to be profitable, did 18 he? 19 MR. BOSTWICK: Objection. Foundation. 20 THE WITNESS: We had communicated all 21 these elements to Belmac and I don't know what 22 Belmac transmitted to Mr. Murphy so I cannot</p>

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<p style="text-align: right;">Page 173</p> <p>1 answer the question.</p> <p>2 BY MR. STEWART:</p> <p>3 Q. Did Mr. Murphy make -- And with</p> <p>4 respect to the quality audit report -- Mr. Murphy</p> <p>5 claimed or said that he -- he was not aware of the</p> <p>6 quality audit report; correct?</p> <p>7 A. That is correct. The report had been</p> <p>8 sent to Belmac and Mr. Murphy said that he was not</p> <p>9 aware of this report and it was a -- a critical</p> <p>10 point in our relationship and that's why I sent</p> <p>11 him a copy after my return from our discussion.</p> <p>12 Q. So you didn't discuss with Mr. Murphy</p> <p>13 batches and you didn't discuss with Mr. Murphy the</p> <p>14 quality audit report; you reminded him of these</p> <p>15 things; is that fair?</p> <p>16 MR. BOSTWICK: Objection. Form.</p> <p>17 THE WITNESS: No, that's not correct.</p> <p>18 I did not discuss the quality audit report but I</p> <p>19 discussed the quality problem for which they were</p> <p>20 deficient at the Zaragoza plant. These quality</p> <p>21 problems are reflected not only in the audit</p> <p>22 reports but also in the reactions of some of our</p>	<p style="text-align: right;">Page 175</p> <p>1 Incorporated, was the owner of Laboratorios</p> <p>2 Belmac; correct?</p> <p>3 A. Bentley Pharmaceutical always</p> <p>4 presented itself as the mother company of</p> <p>5 Laboratorios Belmac.</p> <p>6 Q. And the relationship with Laboratorios</p> <p>7 Belmac -- between Laboratorios Belmac and</p> <p>8 Ethypharm was profitable for Laboratorios Belmac;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And as the representative of the owner</p> <p>12 of Laboratorios Belmac, Mr. Murphy was interested</p> <p>13 in preserving the relationship. Would you agree?</p> <p>14 MR. BOSTWICK: Objection to "owner."</p> <p>15 THE WITNESS: Mr. Murphy had written</p> <p>16 to us a letter stating that he understood our</p> <p>17 decision but he wished to review the possibilities</p> <p>18 to do otherwise.</p> <p>19 BY MR. STEWART:</p> <p>20 Q. So he was -- To the extent he was</p> <p>21 discussing the details of the production problems</p> <p>22 and the quality problems, he was trying to arrive</p>
<p style="text-align: right;">Page 174</p> <p>1 customers that had been communicated to Belmac and</p> <p>2 that had been the subject of our January letter.</p> <p>3 BY MR. STEWART:</p> <p>4 Q. Now, the purpose of this meeting was</p> <p>5 to hear Mr. Murphy's response to the decision made</p> <p>6 by Ethypharm to terminate the business</p> <p>7 relationship with Laboratorios Belmac?</p> <p>8 MR. BOSTWICK: Objection.</p> <p>9 Mischaracterization of prior testimony.</p> <p>10 THE WITNESS: That's not at all what I</p> <p>11 said. I said that I was going to this meeting</p> <p>12 because I thought that following our decision to</p> <p>13 end the relationship, we had received a letter</p> <p>14 from Mr. Murphy that indicated that he -- he -- he</p> <p>15 was wishing for an agreement.</p> <p>16 MR. STEWART: Right.</p> <p>17 THE WITNESS: So my concern was to</p> <p>18 find a mutually acceptable conditions for such an</p> <p>19 agreement once I had confirmed as I said that</p> <p>20 Mr. Murphy really wanted an agreement.</p> <p>21 BY MR. STEWART:</p> <p>22 Q. And Bentley Pharmaceuticals,</p>	<p style="text-align: right;">Page 176</p> <p>1 at a solution so that the business relationship</p> <p>2 could continue; isn't that so?</p> <p>3 A. Yes. That is the feeling I had, that</p> <p>4 he wanted to reach an agreement.</p> <p>5 Q. Okay. Now, after your meeting --</p> <p>6 Turn, please, to Exhibit 21. Okay. Mr. Gonzalez</p> <p>7 Azpeitia, the general manager of Laboratorios</p> <p>8 Belmac, wrote to you directly; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And in that letter he pointed out that</p> <p>11 there were problems with certain of the</p> <p>12 requirements that you had advanced at the meeting</p> <p>13 with Mr. Murphy; is that right?</p> <p>14 A. He had problems with the application</p> <p>15 of the steps that had been planned during the --</p> <p>16 the meeting I had with Mr. Murphy.</p> <p>17 Q. And those problems were discussed,</p> <p>18 then, between Mr. Gonzalez and the general manager</p> <p>19 of Laboratorio -- of -- of Ethypharm Spain, were</p> <p>20 they not?</p> <p>21 A. Yes, but he was submitting to me the</p> <p>22 problems that he had encountered so he was</p>

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<p style="text-align: right;">Page 177</p> <p>1 probably expecting from Ethypharm France support 2 or even -- Oh, yeah. Support and understanding in 3 dealing with these problems. 4 Q. And were these problems resolved? 5 MR. BOSTWICK: Objection. Vague. 6 THE WITNESS: Yes. 7 BY MR. STEWART: 8 Q. And -- 9 A. Yes. It depends which problems we're 10 talking about, but the manufacturing problems, 11 yes. 12 Q. And Mr. Bostwick mentioned to you that 13 on page 2 -- page 2 of the translation, anyway -- 14 I guess page 2 of the -- of Exhibit 16 -- that 15 Mr. Murphy had mentioned a quality consultant, 16 formerly -- formerly of SKB, that could be made 17 available? 18 A. Not made available but that could be 19 sent to Zaragoza. 20 Q. Could be sent to Zaragoza? 21 THE WITNESS (IN ENGLISH): Will be 22 sent to Zaragoza.</p>	<p style="text-align: right;">Page 179</p> <p>1 BY MR. STEWART: 2 Q. And Mr. Murphy did not attend that 3 meeting; correct? 4 A. That's correct. 5 Q. The general manager of Laboratorios 6 Belmac and other people with him attended in his 7 place; is that right? 8 A. Oh, it was not in its place -- he said 9 he was scheduled to attend so Mr. Murphy's place 10 was empty. 11 Q. But the meeting went on without 12 Mr. Murphy? 13 A. That's correct. 14 MR. STEWART: I have nothing further. 15 MR. BOSTWICK: We can go off the 16 record. 17 THE VIDEOGRAPHER: For good? 18 MR. BOSTWICK: Yes. 19 THE VIDEOGRAPHER: This ends Tape 20 No. 3 and concludes the testimony of Claude Dubois 21 in the matter of Ethypharm versus Bentley 22 Pharmaceuticals. The date is July 12th, 2006.</p>
<p style="text-align: right;">Page 178</p> <p>1 THE INTERPRETER: Will be sent. 2 BY MR. STEWART: 3 Q. But, in fact, other arrangements were 4 made after Mr. Murphy consulted with Mr. Gonzalez 5 Azpeitia? 6 A. I don't know what Mr. Murphy discussed 7 with Mr. Gonzalez Azpeitia but I know that 8 Mr. Gonzalez Azpeitia informed me that it was 9 desirable to put together a committee to look -- 10 to look at our quality problems. No mention was 11 made of the consultant. 12 Q. And the meeting that -- What was the 13 date of the meeting that was held between yourself 14 and Mr. De Basilio and Mr. Gonzalez and his team? 15 MR. BOSTWICK: Objection. Vague. 16 THE WITNESS: Are you -- Are you 17 refer -- are you referring to the '98 meeting or 18 the '97 meeting? 19 MR. STEWART: The '97 meeting. 20 THE WITNESS: It was April 18th if I 21 recall correctly. 22 ...</p>	<p style="text-align: right;">Page 180</p> <p>1 The time is 17:12:31. Off the record. 2 3 4 5 (Whereupon, signature not having been waived, the 6 deposition concluded at 5:12 p.m.) 7 * * * 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>

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1 UNITED STATES DISTRICT COURT

2 DISTRICT OF DELAWARE

3 - - - - -

4 ETHYPHARM S.A. FRANCE and :

5 ETHYPHARM S.A. SPAIN, :

6 Plaintiffs, :

7 VS. : CASE NO.

8 BENTLEY PHARMACEUTICALS, : 04-13000-SLR

9 INC., :

10 Defendant. :

11 - - - - -

12

13 DEPOSITION OF PAUL FITZGIBBONS, a witness

14 called by and on behalf of the Plaintiffs, taken

15 pursuant to the applicable provisions of the

16 Federal Rules of Civil Procedure, before

17 Sandra L. Bray, Registered Diplomate Reporter,

18 CSR Number 103593, and Notary Public in and for

19 Commonwealth of Massachusetts, at the offices of

20 Edwards Angell Palmer & Dodge LLP,

21 111 Huntington Avenue, Boston, Massachusetts, on

22 Thursday, August 3, 2006, commencing at

23 9:14 a.m.

24